PUBLIC PROSECUTOR

v.

SAFIAN ABDULLAH & ANOR.

HIGH COURT MALAYA, MELAKA
WAN YAHYA J
[CRIMINAL TRIAL NO. 1 OF 1981]
28 FEBRUARY 1983

CRIMINAL LAW AND PROCEDURE: *Sentence - Both accused pleaded guilty to amended charge of culpable homicide not amounting to murder - Original charge was murder - Mitigative factors - Youth, addiction and sudden fight - Whether imposition of custodial sentence fair and appropriate.*

The two accused aged 20 and 21 years who were originally charged for murder under s. 302 of the Penal Code had pleaded guilty to an amended charge of culpable homicide not amounting to murder under s. 304 of the Penal Code.

The facts of the case, as admitted by both accused, indicated that they had gone to the deceased's shop to commit robbery on 10 August 1980 at about 11.30 p.m. In perpetration of this planned act, the 1st accused had armed himself with a curved and exceedingly lethal weapon known as a 'kerambit' whilst the 2nd accused equipped himself with a pair of hand gloves. On the night of the murder, the 2nd accused knocked on the closed door of the isolated shop in which the deceased habitually resided alone and on the pretext of buying cigarettes he lured the deceased into opening the shop door. On entering the shop, he swiftly grabbed the deceased and stuffed the hand gloves into the victim's mouth and the 1st accused who had been hiding in a dark spot, rushed in and brutally slashed the old man. The deceased shopkeeper was overpowered by the accused and dragged from the verandah into the shop, where both the accused again set upon him mercilessly, using, in the course of the attack, not only the kerambit but empty bottles to crush his head and a rope to strangle him. As a result of this attack the shopkeeper suffered from extensive bodily injuries consisting of multiple deep wounds on his body, neck and face and several ribs of the deceased were found to be broken. The deceased, it was disclosed, died from thorasic, intra craneal and intra abdominal injuries with asphyxia due to strangulation. Counsel for both accused raised three mitigative factors for the Court's consideration, *viz*. youth, addiction and sudden fight.

Held:

[1] The Court found no immaturity in the manner in which they went about to execute their plans. They appeared as young men of no moral compunction and a pair of ruthless criminals. The Court was unable to attribute their depradation to the folly or ignorance of youth. Any person, however young, who could so brutally strangle a dying man with such atrocity is in truth a sordid criminal of ferine propensity.

[2] As for the excuse of addiction and the alleged effect of consuming beer with the drug 'Roche' the Court found neither reality nor rationality in the claim. Even if both the accused were presumed to be addicted, the Court was unable to accept, even for a moment, that a person under the full influence of any drug, can rationally contrive a scheme of armed robbery.

[3] If, it was held that both the accused had committed the offence under the influence of the drug, then the Court would venture to suggest that they certainly belong to a dangerous category of addicts whose exposure to drug can enhance their capabilities as master contrivers

of crime. For such criminals a prescriptive period of imprisonment will be required towards their proper reformation and rehabilitation and until such time when they could be suitably corrected, the Court must protect the society from such propensity.

[4] In the Court's opinion the two accused, in spite of their ages, are dangerous young criminals of aggressive propensity. Unless they are properly reformed they will continue to be a serious menace to society. A sufficiently long period of detention will be required for their correction, reformation and rehabilitation before they can be allowed to return to society.

[5] The Court therefore considered the imposition of the custodial sentence on both accused fair and appropriate.

[Both accused sentenced to 14 year's imprisonment.]

Case referred to:
Mohamed Jusoh v. PP [1947] MLJ 130

Legislation referred to:
Penal Code, ss. 302, 304

For the public prosecutor - C.W. Chan, DPP
For the 1st accused - Nadchatiram
For the 2nd accused - P. Devadas

JUDGMENT

Wan Yahya J:

The two accused persons were originally charged for murder under s. 302 of the Penal Code. However at the date of hearing the charge was amended to culpable homicide not amounting to murder under s. 304 of the same Code to which charge both accused pleaded guilty.

The facts of the case, as admitted by both accused, indicate that they had gone to the deceased's shop to commit robbery. In perpetration of this planned act the 1st accused had armed himself with a curved and exceedingly lethal weapon known as a 'kerambit', whilst the 2nd accused equipped himself with a pair of hand gloves. At about 11.30 p.m. on the night of 10 August 1980 the 2nd accused knocked on the closed door of the isolated shop in which the deceased habitually resided alone. On the pretext of buying cigarettes he lured the deceased into opening the shop door. Having thus gained entrance, he swiftly grabbed the deceased and stuffed the hand gloves into the victim's mouth. Thereupon the 1st accused, who had been hiding in a dark spot, rushed in and brutally slashed the old man. The deceased shopkeeper was overpowered by the accused and dragged from the verandah into the shop, where both accused again set upon him mercilessly, using, in the course of the attack, not only the kerambit but empty bottles to crush his head and a rope to strangle him. As a result of this ferocious attack the shopkeeper suffered from extensive bodily injuries consisting of multiple deep wounds on his body, neck and face. Several ribs of the deceased were found to be broken. The deceased, it was disclosed, died from thorasic, intra craneal and intra abdominal injuries with asphyxia due to strangulation.

Counsel for both accused raised three mitigative factors for this Court's consideration, *viz.* youth, addiction and sudden fight.

It is true that the accused persons were 20 and 21 years old at the time of committing the offence, but I can find no immaturity in the manner in which they went about to execute their plans. They had planned a difficult robbery in which they were able to exercise a quality

of anticipation and reasoning of matured criminals and they carried out their felonious objective mercilessly with no apparent sign of panic in the face of some resistance by the victim. Even after having mortally wounding the shopkeeper with the kerambit and broken bottles, they were not prepared to leave matters to chance, but instead twisted a rope around the dying man's neck and strangled him. The act of strangulating the deceased, when he was in such a state, was no doubt committed so as to preclude absolutely the possibility of identification. For all these acts of savagery both accused displayed no emotion and offered no words of remorse or repentance. They appear to me as young men of no moral compunction and a pair of ruthless criminals. I am unable to attribute their depradation to the folly or ignorance of youth. Any person, however young, who could so brutally strangle a dying man with such atrocity is in truth a sordid criminal of ferine propensity.

As for the excuse of addiction and the alleged effect of consuming beer with the drug 'Roche' I can find neither reality nor rationality in the claim. Besides the mere production of a newspaper cutting on 'Roche' Counsel had not come up with any appreciable evidence on the accused's addiction to that drug. Even if they were presumed to the addicted, I am unable to accept, even for a moment, that a person under the full influence of any drug, can rationally contrive a scheme of armed robbery.

If, in spite of all this, it is held that they had committed the offence under the influence of the drug, then I would venture to suggest that they certainly belong to a dangerous category of addicts whose exposure to drug can enhance their capabilities as master contrivers of crime. For such criminals a prescriptive period of imprisonment will be required towards their proper reformation and rehabilitation and until such time when they could be suitably corrected, the Court must protect the society from such propensity.

In *Mohamed Jusoh v. PP* [1947] MLJ 130 the Court of Appeal disagreed with the old method of sentencing first offenders to one-third of the maximum term provided but laid down several factors to be considered. Sentencing offenders is indeed a complex discerning process, which depends not on the use of a common mathematical yardstick but on various considerations of facts and circumstances relating to the offence, the offender and public interest.

When sentencing these offenders this Court considered the following factors:

1. The nature of the offence.
2. The circumstances in which it was committed.
3. The degree of deliberation shown by the offender.
4. Whether the offence is an organised crime or not.
5. The provocation received by the offender, if any.
6. Whether violence is involved.
7. The antecedents of the offender and whether he is a danger to society.

All except for the last factors have been discussed earlier. There is no doubt that s. 304 is a very serious offence for which the maximum punishment is 20 years' imprisonment. It is also in evidence that it was committed in a callous, calculated and brutal manner. The crime was a well organised one involving three persons and the violence arose out of an utterly unprovoked incident. Even if the deceased's struggle to save his life can be construed as provocation, yet there is absolutely no reason for the accused persons to strangle him with a rope after he had been overpowered and mortally wounded. As for the antecedents of the

offenders, they were first offenders, but then there was nothing favourable disclosed about them either by both Defence Counsel. On the contrary, Counsel for the 1st accused in mitigation stated that his client was a self confessed drug addict.

In my opinion these two accused, in spite of their ages, are dangerous young criminals of aggressive propensity. Unless they are properly reformed they will continue to be a serious menace to society. A sufficiently long period a detention will be required for their correction, reformation and rehabilitation before they can be allowed to return to society.

As the sentences of 14 years' imprisonment on both accused persons are deemed to have commenced almost three years ago, from the date of their arrest, they will be required at the most to serve a total period of 11 years' imprisonment. However, with the usual one-third remission for good conduct, they may well be out of prison in less than 8 years - a period of detention reasonably required for their reformation.

I therefore consider the imposition of the custodial sentence on both accused fair and appropriate.

Also found at [1983] 1 CLJ 324